

7462

Barclay
Page 1

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-190136

DATE: August 29, 1978

MATTER OF: McIntyre Engineering Company, Inc.

DIGEST:

1. Whether to retest, re-examine or remove product from Qualified Products List is decision for QPL-preparing activity, and no information has been presented in present case to show that decision to retain firm's product on QPL lacked reasonable basis.
2. Protester contends that bidders intend to furnish nonspecification or nonqualified components in their qualified products. IFB's did not require bidders to identify manufacturers of components in their bids, and bids did not take any exception to specifications. In these circumstances, bids are responsive.
3. Where bids are responsive, question whether bidders will furnish products in conformity with specifications relates to bidders' responsibility and to contract administration. Affirmative determinations of responsibility are not reviewed by GAO except in circumstances not present here, and contract administration is function of contracting agency.

McIntyre Engineering Company, Inc. (McIntyre), has protested concerning invitations for bids (IFB's) Nos. N00104-77-B-1115, N00104-78-B-0022 and N00104-78-B-0096 (issued by the Naval Regional Procurement Office, Philadelphia, Pennsylvania) and request for proposals (RFP) No. N00102-77-R-7307 (issued by the Portsmouth, New Hampshire, Naval Shipyard). The procurements involve certain cooling coils and cooler units.

With reference to IFB's -0022 and -0096 and the RFP, the protester contends essentially that the bids and proposal submitted by Colmac Coil Manufacturing, Inc. (Colmac), should have been

rejected because the product offered by Colmac had not been properly included on the applicable Qualified Products List (QPL) by the Navy.

In McIntyre Engineering Company, Inc., B-190136, March 7, 1978, 78-1 CPD 177, we considered the same contention with reference to Colmac bids on several earlier solicitations. We pointed out that the Colmac product was listed on the QPL and that the Colmac bids, which offered without exception to furnish products in compliance with the specifications, were responsive. We also noted that because of questions which had been raised concerning the QPL listing, the Navy was conducting an investigation to determine whether Colmac's product should be retained on the QPL.

In this regard, the Naval Ship Engineering Center (NAVSEC) has reported that as a result of the investigation, Colmac will be retained on the QPL. Among other things, NAVSEC has pointed out that in a performance test the Colmac unit exceeded specification requirements as to capacity, and that Colmac drawings reflecting tube spacing, fin width and other critical dimensions had been reviewed and approved.

It is well established that whether a qualified product should be re-examined or retested, or removed from the QPL, is a matter primarily for determination by the QPL-preparing activity (in this instance, NAVSEC). See Galbraith-Pilot Marine Corporation, 56 Comp. Gen. 183, 186 (1976), 76-2 CPD 488, and decisions cited therein. The protester's only response to the information furnished by NAVSEC is in effect a repetition of its earlier argument that proper procedures were not followed at the time the Colmac product was originally placed on the QPL. In this light, we have no ground to conclude that NAVSEC's determination to retain Colmac on the QPL lacks a reasonable basis.

Further, examination of the Colmac bids and proposal does not reveal that any exceptions to the

specifications were taken therein. In these circumstances, as pointed out in our decision of March 7, 1978, supra, the question whether Colmac will furnish products in conformity with the specifications during contract performance relates to Colmac's responsibility and to matters of contract administration. Affirmative determinations of responsibility are not reviewed by our Office except in circumstances not present here, and contract administration is the function of the contracting agency.

The protester raises an additional issue concerning Colmac's bid under IFB -0096. McIntyre alleges that Colmac is offering a fan motor which does not have a bearing pulling feature required by the fan motor specification. In support of this, the protester points out that Colmac recently purchased some fan motors from Joy Manufacturing Company (Joy) which do not have the bearing pulling feature. A related issue concerns the low bid under IFB -1116, which was submitted by Nuclear Cooling, Inc./Marlo Coil (Nuclear). The protester alleges that correspondence submitted by Nuclear in connection with the protest clearly shows that Nuclear did not intend to furnish with its unit a Joy fan--the only fan which had been qualified with the unit. McIntyre asserts that Nuclear's intention to use a fan being produced by another company clearly renders its bid nonresponsive.

We note that neither IFB required bidders to identify in their bids the manufacturers of the fans or fan motors which would be supplied with their qualified products. Moreover, neither Colmac's nor Nuclear's bid took any exception to the specifications in this respect. In these circumstances, the bids are responsive. See B-174440, December 10, 1971. Like the other contentions raised by McIntyre, these issues go to the responsibility of the bidders and to matters of contract administration. For the record, both bidders furnished statements to the contracting officer after bid opening affirming their intention to comply with all the specifications. In addition, whether changes in the components of the qualified products call for retesting or re-examination is, as already noted, a matter for determination by NAVSEC

B-190136

4

The protest is denied.

R. F. Kettner

Deputy Comptroller General
of the United States